

§ 614.5 Reservation of authority.

The Secretary of Agriculture, the Chief of NRCS, if applicable, or a designee, reserve the right to make a determination at any time on any question arising under the programs covered under this part within their respective authority, including reversing or modifying in writing, with sufficient reason given therefore, any decision or technical determination made by an NRCS official.

§ 614.6 Agency records and decision notices.

(a) All NRCS decisions under this part are based upon an agency record. NRCS will supplement the agency record, as appropriate, during the informal appeals process.

(b) NRCS notifies participants of the agency's preliminary and final technical determinations and program decisions through decision notices. By certified mail return receipt requested, NRCS will send to the participant a decision notice within 10 working days of rendering a technical determination or program decision. In lieu of certified mail, NRCS may hand deliver notices to participants with written acknowledgment of delivery by the participant. Each decision notice contains the following:

(1) The factual basis for the technical determination or program;

(2) The regulatory, statutory, and/or policy basis for the technical determination or program decision; and

(3) Information regarding any informal appeal rights available under this part; the process for requesting such appeal; and the procedure for requesting further review before the FSA county committee pursuant to 7 CFR 780 or NAD pursuant to 7 CFR part 11, if applicable.

§ 614.7 Preliminary technical determinations.

(a) A preliminary technical determination becomes final 30 days after the participant receives the decision, unless the participant files an appeal with the appropriate NRCS official as indicated in the decision notice requesting:

(1) Reconsideration with a field visit in accordance with paragraphs (b) and (c) of this section; or

(2) Mediation as set forth in § 614.11.

(b) If the participant requests reconsideration with a field visit, the designated conservationist, participant, and, at the option of the conservation district, a district representative will visit the subject site for the purpose of gathering additional information and discussing the facts relating to the preliminary technical determination. The participant may also provide any additional documentation to the designated conservationist. Within 15 days of the field visit, the designated conservationist, based upon the agency record as supplemented by the field visit and any participant submissions, will reconsider his or her preliminary technical determination. If the reconsidered determination is no longer adverse to the participant, the designated conservationist issues the reconsidered determination as a final technical determination. If the preliminary technical determination remains adverse, then the designated conservationist will forward the revised decision and agency record to the State Conservationist for a final determination pursuant to paragraph (c) of this section, unless further appeal is waived in writing by the participant in accordance with paragraph (d) of this section.

(c) The State Conservationist will issue a final technical determination to the participant as soon as is practicable after receiving the reconsideration and agency record from the designated conservationist. The technical determination issued by the State Conservationist becomes a final NRCS decision upon receipt by the participant. Receipt triggers the running of the 30 day appeal period to NAD, or, if applicable, to the FSA county committee.

(d) In order to address resource issues on the ground immediately, a participant may waive, in writing to the State Conservationist, appeal rights so that a preliminary technical decision becomes final before the expiration of the 30 day appeal period.

§ 614.8 Final technical determinations.

(a) Preliminary technical determinations become final and appealable: